

**United States Department of Labor
Employees' Compensation Appeals Board**

V.S., Appellant

and

**DEPARTMENT OF THE AIR FORCE,
JOINT BASE CHARLESTON, Charleston, SC,
Employer**

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**Docket No. 19-1534
Issued: September 25, 2020**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 10, 2019 appellant filed a timely appeal from a January 25, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ Together with her appeal request, appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). After exercising its discretion, by order dated September 23, 2020, the Board denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 19-1534 (issued September 23, 2020).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the January 25, 2019 decision, appellant submitted additional evidence to OWCP and on appeal to the Board. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$26,210.07 because she concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation benefits for the period December 1, 2015 through August 18, 2018, without appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$250.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On September 16, 2013 appellant, then a 60-year-old medical support assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 12, 2013 she injured her elbows and buttocks when she reached for the telephone and her chair slid out from under her causing her to fall while in the performance of duty. She stopped work on August 16, 2013, returned to full-time work on September 19, 2013, and stopped work again on October 8, 2013. OWCP accepted appellant's claim for bilateral elbow contusions and aggravation of preexisting displacement of lumbar intervertebral disc without myelopathy. It paid her wage-loss compensation on the supplemental rolls commencing October 8, 2013 and on the periodic rolls commencing May 4, 2014.

In an EN1032 form completed on April 13, 2018, appellant advised OWCP that she had been receiving SSA age-related retirement benefits as part of an annuity under the Federal Employees Retirement System (FERS).

Beginning on April 19, 2018, OWCP sent SSA several forms entitled "FERS SSA dual benefits calculation fax transmittal," and requested that it provide, with effective dates, the SSA rate with FERS and the SSA rate without FERS for SSA benefits attributable to federal service.

On August 17, 2018 OWCP received a May 7, 2018 letter in which SSA advised that appellant began to receive retirement benefits from SSA commencing December 2015. SSA indicated that, effective December 2015, appellant had an SSA rate with FERS of \$1,046.50 and an SSA rate without FERS of \$250.80. The letter further noted that, effective December 2016, she had an SSA rate with FERS of \$1,049.60 and an SSA rate without FERS of \$251.50. Effective December 2017, appellant had an SSA rate with FERS of \$1,070.60 and an SSA rate without FERS of \$256.40.

An SSA/FERS offset was applied to appellant's wage-loss compensation benefits commencing August 19, 2018. In an August 20, 2018 FERS offset calculation sheet based on the SSA documentation (providing the SSA payment rates both with and without FERS), OWCP calculated that, for the period December 1, 2015 through August 18, 2018, appellant received an overpayment of compensation in the amount of \$26,210.07.

In a November 29, 2018 notice, OWCP advised appellant of its preliminary determination that she received a \$26,210.07 overpayment of compensation for the period December 1, 2015 through August 18, 2018 because she received SSA retirement benefits based on her age and attributable to her federal service, without an offset being made, while she received FECA wage-loss compensation benefits. It also made a preliminary determination that appellant was without

fault in the creation of the overpayment because she was not aware or could not have reasonably known that she was paid improper compensation. OWCP informed her that she could submit evidence challenging the fact, amount, or finding of fault, and request waiver of recovery of the overpayment. It advised appellant that she could submit additional evidence in writing or at pre-recoupment hearing, but that a pre-recoupment hearing must be requested within 30 days of the date of the written notice of overpayment. OWCP requested that she complete and return an enclosed overpayment recovery questionnaire (Form OWCP-20) within 30 days even if she was not requesting waiver of the overpayment. It also requested that appellant submit supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP advised her that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant did not respond within the afforded period.

By decision dated January 25, 2019, OWCP determined that appellant received a \$26,210.07 overpayment of compensation for the period December 1, 2015 through August 18, 2018 because she received SSA retirement benefits based on her age and attributable to her federal service, without appropriate offset being made, while she received FECA wage-loss compensation benefits. It found that she was without fault in the creation of the overpayment. OWCP denied appellant's request for waiver of recovery of the overpayment because she did not submit the requested financial information required to establish that recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience. It required recovery of the overpayment by deducting \$250.00 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.⁴ Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁵

Section 10.421(d) of OWCP's implementing regulations requires OWCP to reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.⁶ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁷

⁴ 5 U.S.C. § 8102.

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁷ FECA Bulletin No. 97-09 (February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$26,210.07 because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits for the period December 1, 2015 through August 18, 2018, without appropriate offset.

Commencing December 1, 2015, OWCP paid appellant wage-loss compensation benefits for total disability due to her accepted injury. Appellant received wage-loss compensation benefits and SSA age-related retirement benefits for the same period, *i.e.*, December 1, 2015 through August 18, 2018. The information provided by SSA indicated that a portion of appellant's SSA age-related retirement benefits were attributable to her federal service. As OWCP neglected to offset her FECA wage-loss compensation benefits for the period December 1, 2015 through August 18, 2018, the Board finds that she received a prohibited dual benefit which created an overpayment of wage-loss compensation.⁸

Based on the rates provided by SSA, OWCP calculated the overpayment of compensation by determining the portion of SSA age-related retirement benefits that were attributable to appellant's federal service. It received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided appellant's SSA rate with FERS and without FERS beginning December 2015. OWCP provided its calculations outlined in a FERS offset calculation worksheet regarding the amount that it should have offset for the relevant period based on the SSA document. The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual benefits totaling \$26,210.07, thereby creating an overpayment of compensation in that amount.⁹

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹⁰ Section 10.438 of OWCP's regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹¹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

⁸ See *id.*; A.C., Docket No. 18-1550 (issued February 21, 2019).

⁹ See A.S., Docket No. 19-0171 (issued June 12, 2019).

¹⁰ 5 U.S.C. § 8129.

¹¹ 20 C.F.R. § 10.438.

OWCP found appellant without fault in the creation of the overpayment. Therefore, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹² Appellant, however, had the responsibility to provide financial information to OWCP,¹³ and she did not do so.

In its preliminary determination dated November 29, 2018, OWCP clearly explained the importance of providing a completed Form OWCP-20 and supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant, however, did not respond to this request. She did not complete and submit the Form OWCP-20 within the afforded period or otherwise submit the financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

Consequently, as appellant did not submit the information required under section 10.438 of OWCP's regulations, which was necessary to determine her eligibility for waiver, OWCP properly denied waiver of recovery of the overpayment.¹⁴

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of Title 20 of the Code of Federal Regulations provides that if an overpayment of compensation has been made to one entitled to future payments, proper adjustment shall be made by decreasing subsequent payments of compensation, "taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship."¹⁵ When an individual fails to provide requested information on income, expenses, and assets, OWCP should follow minimum collection guidelines, which state in general that government claims should be collected in full and that, if an installment plan is accepted, the installments should be large enough to collect the debt promptly.¹⁶

ANALYSIS -- ISSUE 3

The record supports that, in requiring recovery of the overpayment by deducting \$250.00 from appellant's continuing compensation payments every 28 days, OWCP took into consideration the factors set forth in section 10.441 and found that this method of recovery would minimize any resulting hardship on her. Appellant failed to provide information on income, expenses, and assets, and OWCP followed minimum collection guidelines by requiring installments large enough to

¹² See *supra* note 10.

¹³ See *supra* note 11.

¹⁴ *Id.*

¹⁵ 20 C.F.R. § 10.441.

¹⁶ *R.O.*, Docket No. 18-0076 (issued August 3, 2018); *Gail M. Roe*, 47 ECAB 268 (1995).

collect the full debt promptly. Therefore, OWCP properly required recovery of the overpayment by deducting \$250.00 from appellant's continuing compensation payments every 28 days.¹⁷

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$26,210.07 because she concurrently received SSA age-related retirement benefits while also receiving FECA wage-loss compensation benefits for the period December 1, 2015 through August 18, 2018, without appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$250.00 from appellant's continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁷ See *id.*